

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE

MAX ALEXANDER SOFFAR

Petitioner.

No. _____

DEATH PENALTY CASE

CAPITAL HABEAS PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL
(DEATH PENALTY CASE)

Undersigned counsel, Seth Kretzer, with the support and agreement of Petitioner, MAX ANDREW SOFFAR, an inmate on Texas' Death Row, respectfully asks this Court to him as an attorney to represent Mr. Soffar in his federal habeas corpus proceedings. This motion is made pursuant to 18 U.S.C. § 3599(a)(2), and *McFarland v. Scott*, 512 U.S. 849 (1994).

In support of this request, counsel would show as follows:

1. Mr. Soffar was convicted of capital murder in the 232nd District Court of Harris County, Texas, and was sentenced to death on March 22, 2006. His conviction and sentence were affirmed by the Texas Court of Criminal Appeals on November 19, 2009. *Soffar v. State*, AP-75363, 2009 WL 3839012 (Tex. Crim. App. Nov. 19, 2009). Mr. Soffar, by and through his state habeas counsel, filed his Initial Application for Writ of Habeas Corpus with the convicting court on February 8, 2008. The District Court entered findings of fact and conclusions of law recommending the relief be denied. The Texas Court of Criminal Appeals adopted those

findings and recommendation and denied relief on October 3, 2012 (see Exhibit “A” the order and letter from Texas Court of Criminal Appeals).

2. In *McFarland v. Scott*, the Supreme Court was presented with the question of whether, in *advance* of filing a federal habeas petition, a condemned state prisoner who sought to file a federal petition enjoyed a right to counsel. The Court decided that it did:

The language and purposes of § 848(q)(4)(B) and its related provisions establish that the right to appointed counsel includes a right to legal assistance in the preparation of a habeas corpus application. We therefore conclude that a ‘post conviction proceeding’ within the meaning of § 848(q)(4)(B) is commenced by the filing of a death row defendant’s motion requesting the appointment of counsel for his federal habeas corpus proceeding. McFarland filed such a motion and was entitled to the appointment of a lawyer.

512 U.S. 849, 856-857 (1994).

3. Mr. Soffar is financially unable to obtain adequate representation, investigative, expert, and other services reasonably necessary to pursue federal habeas corpus relief pursuant to 28 U.S.C. § 2254. (see Exhibit “B” statement of indigence executed by Soffar).

4. Undersigned counsel is willing to accept CJA-30 appointment and is qualified to be appointed under 18 U.S.C. § 3599(c) in that he has been admitted to practice in the United States Court of Appeals for the Fifth Circuit and the Southern District of Texas since 2009.

5. At the trial-court level, Counsel has filed two capital habeas petitions in the Southern District of Texas; *Allen v. Thaler*, 4:11-cv-01676, and *Holiday v. Thaler*, 4:11-cv-01696. *Allen* is pending before Judge Gilmore and *Holiday* is pending before Judge Lake.

6. At the appeals-court level, Counsel has argued 10 felony cases before the Fifth Circuit in the past 2 years.

7. One of these cases, *United States v. Williams*, was a direct appeal from a Federal Death Penalty Act prosecution and resulted in unanimous reversal on the grounds of both sufficiency of the evidence and jury instructional error. 610 F.3d 271 (5th Cir. 2010).

8. A Proposed Order is attached for this Court's convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Seth Kretzer", is written above a horizontal line.

Seth Kretzer
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CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL has been served upon the Harris County District Attorney's Office-Post Conviction Writ Division by placing a copy of the same into the United States Mail, first-class postage prepaid addressed to:

Lynn Hardaway
Harris County District Attorney's Office
Post Conviction Writ Division
1201 Franklin, Suite 600
Houston, Texas 77002

Dated this 15 day of October, 2012.

A handwritten signature in cursive script, appearing to read "Seth Kretzer", written in black ink.

Seth Kretzer

